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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION THREE

COUNTY OF LOS ANGELES,

Plaintiff and Respondent,

v.

AMERICAN CONTRACTORS  
INDEMNITY COMPANY,

Defendant and Appellant.

B204844

(Los Angeles County  
Super. Ct. No. SJ-2937)

APPEAL from a judgment and an order of the Superior Court of Los Angeles County, Luis A. Lavin, Judge. Appeal from judgment is dismissed and the order is affirmed.

Nunez & Bernstein and E. Alan Nunez for Defendant and Appellant.

Raymond G. Fortner, Jr., County Counsel, Brian T. Chu, Principal Deputy County Counsel and Melissa McCaverty for Plaintiff and Respondent.

This appeal presents a challenge by American Contractors Indemnity Company (appellant) to (1) a summary judgment entered in favor of the County of Los Angeles (the County) and against appellant on a bail bond forfeiture in a criminal law case, and (2) a post-judgment order denying appellant's motion for relief from the judgment and the forfeiture.

Our review of the record shows that appellant's appeal from the summary judgment must be dismissed for at least two reasons. The summary judgment is not appealable because it is a consent judgment that was entered in compliance with the terms of the of the bail bond, including both the consent terms and the terms of the risk that appellant undertook by issuing the bond. Moreover, even if the summary judgment were appealable, the appeal taken from it was not timely filed under provisions of the California Rules of Court.<sup>1</sup>

Regarding appellant's appeal from the order denying its motion to vacate the summary judgment and bail forfeiture, while that appeal was timely, the record discloses no grounds for reversing the order and so it will be affirmed.

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<sup>1</sup> Prior to oral argument in this case, we sent the parties a letter asking them to submit letter briefs on the issue of the timeliness of appellant's notice of appeal, and we informed them that at the scheduled oral argument, only the timeliness issue would be addressed and if the court determined that the notice of appeal was timely filed, the merits of the substantive issues in the appeal would be considered at a subsequent oral argument. However at the initial oral argument, pursuant to the express consent of the parties made on the record, both the timeliness issue and the substantive merits of the appeal were addressed by the court and the parties.

## ***BACKGROUND OF THE CASE***

Through its local bail bondsman agent, Hutch's Bail Bonds (Hutch), appellant issued a bail bond in the amount of \$50,000 for one Grikor Yessayan (Yessayan). The bond was issued on January 31, 2006, and it states Yessayan was charged with felony violation of Penal Code section 243, subdivision (c) (2), battery on a peace officer engaged in the performance of his or her duties.<sup>2</sup>

On February 2, 2006, a criminal complaint was filed against Yessayan charging him with the felony count of battery on a peace officer, and also charging him with a misdemeanor count of violation of section 243, subdivision (b), battery on a peace officer engaged in the performance of his or her duties, and a felony count of violation of section 69, attempting, by use of threats and violence, to deter and prevent an executive officer from performing a duty imposed by law on the officer. The charged acts were alleged to have occurred on January 31, 2006, the date the bail bond issued. The complaint also alleged a prior conviction for residential burglary, and recommended bail of \$75,000.

On February 21, 2006, Yessayan was present in court with his attorney for his arraignment and pleaded not guilty. He appeared again on March 24, 2006 for a disposition hearing. When no disposition was reached, a preliminary hearing was set for April 24, 2006; however, Yessayan failed to appear for that hearing and over the objection of his attorney, bail was ordered forfeited.

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<sup>2</sup> Unless otherwise indicated, all references herein to statutes are to the Penal Code.

Pursuant to section 1305, the clerk of the court issued a notice of forfeiture of the bail bond. The notice states: “Your contractual obligation to pay this bond will become absolute on the 186 [sic] day following the date of the mailing of this notice unless the court shall order the forfeiture set aside and the bond reinstated. You may within 185 days from the date of the mailing of this notice surrender the defendant to the court or to custody or appear in court to make a motion to set aside the forfeiture of bail/bond. If a timely motion is made meeting the requirements set forth in Penal Code section 1305, the court may set aside the forfeiture.” The clerk’s certificate of service states that on the day of the forfeiture, April 24, 2006, *the notice of forfeiture was mailed to Hutch and to appellant, to their respective addresses as shown on the bail bond.* A comparison of the addresses stated on the certificate of service with the addresses that appear on the bail bond shows that the addresses on the certificate are correct.

The superior court record indicates the 185th day fell on October 26, 2006. On October 24, 2006, appellant filed a motion to extend the 185-day period for filing for relief from bail forfeiture. Points and authorities, as well as a declaration from Hutch’s owner, Mr. Hutch Harutyunyan, were filed in support of the motion. The motion was heard on November 17, 2006, and an extension of the 185-day period was granted to December 18, 2006. On December 15, 2006, appellant filed a second motion to extend the relief from forfeiture period and it also was supported by a declaration from

Harutyunyan and points and authorities. At the January 11, 2007 hearing on that second motion, the forfeiture relief period was extended to April 4, 2007.<sup>3</sup>

The extended period for filing for relief from forfeiture ended without forfeiture having been set aside, and on June 15, 2007, summary judgment in the amount of the bail, \$50,000, plus costs of \$300, was entered. A certificate of mailing, dated June 15, 2007, states that the clerk of the court mailed, on that same day, to both appellant and Hutch, a notice of entry of judgment on the forfeited bail bond and a demand for payment.

On July 11, 2007, appellant served a Code of Civil Procedure section 473 motion to set aside the summary judgment and vacate the bail forfeiture, and have returned to it the money paid on the judgment, with interest.<sup>4</sup> The motion was filed the following

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<sup>3</sup> The papers submitted by appellant to support its two motions to extend the 185-day period were not made a part of the appellate record.

<sup>4</sup> Despite the fact that appellant's notice of motion to vacate the summary judgment and bail forfeiture specifically states that the motion was brought under Code of Civil Procedure section 473, appellant states in its presentation to this court that (1) its motion "was not a 'section 473' motion," (2) section 473 "does not apply in bail forfeiture cases," and (3) its motion to vacate was based on sections 1305 and 1308.

Section 1308 provides for a surety to initiate "an action or proceeding available at law" for the purpose of "determin[ing] the validity of the order of forfeiture or summary judgment rendered on it." Section 473, subdivision (d) states that trial courts may set aside void judgments and orders, and here, appellant asserts the summary judgment is void.

Appellant observes that in *People v. National Auto & Cas. Co.* (1966) 242 Cal.App.2d 150, 153, a bail bond forfeiture case, the court stated that "[t]he relief from default provided by section 473 of the Code of Civil Procedure does not apply since '[t]he obligations of bail are governed by the statute specifically applicable thereto.' " However, the court in that case was referring to the period of time in which relief can be granted by a trial court to vacate a bail forfeiture. Whereas section 473,

day. Opposition was filed by the County, and a hearing on the motion was held on October 26, 2007. A proposed attorney order, prepared by the County, states the motion was denied. The proposed order was filed with the court on November 28, 2007, and signed by the court on December 19, 2007.

On December 21, 2007, appellant filed a notice of appeal. That notice states, in part, that appellant “appeals from the order of November 28, 2007, notice of entry of which was given on said date, denying its motion for relief from forfeiture, and from the summary judgment herein.” Appellant’s opening brief on appeal makes it clear that the appeal is taken both from the order denying its motion to vacate the summary judgment and bail forfeiture, and from the summary judgment itself.

### ***ISSUES RAISED BY APPELLANT***

Appellant asserts that the clerk of the court never sent to appellant’s bail agent, Hutch, the notice of bail forfeiture required by section 1305, and therefore the forfeiture, and its resulting summary judgment, cannot stand. Appellant further contends that by adding additional charges against Yessayan and adding the allegation of a prior

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subdivision (b) provides an outside limit of six months to seek relief from judgments, orders, dismissals and other proceedings, that case was governed by section 1305’s time limit for relief from bail forfeiture which, at the time the bail in that case was forfeited, was 90 days. The case involved a section 1305 motion made to have the forfeiture vacated under what that court termed one of the “defenses” in section 1305, which include, for example, the criminal defendant appearing in court either voluntarily or in custody after the bail was forfeited, or the criminal defendant being permanently or temporarily disabled from appearing in court. The court observed that although the surety had timely filed its motion within the 90-day period, it had the motion calendared and heard beyond the 90 days, and the trial court therefore had no jurisdiction, under the statutes in effect at that time, to do anything but enter a summary judgment on the bail forfeiture. (*People v. National Auto & Cas. Co.*, *supra*, 242 Cal.App.2d at pp. 153-154.)

conviction, the County materially increased the risk assumed by appellant when appellant issued its bail bond. Before considering those issues, we will address the timeliness of the appeal from the summary judgment.

### ***DISCUSSION***

#### ***1. The Appeal from the Summary Judgment Is Not Timely***

Summary judgment on the bail forfeiture was entered June 15, 2007. On the same day that judgment was entered, the clerk of the court sent notice of entry of judgment to appellant and to Hutch. Based on that notice and on the dictates of the California Rules of Court, appellant’s appeal from the judgment was required to be filed on or before 60 days after such notice was sent (that is, on or before August 14, 2007), “[u]nless a statute or rule 8.108 provides otherwise.” (Cal. Rules of Court, rule 8.104 (a).)

Rule 8.108 sets out several situations in which the time for filing an appeal from a judgment may be extended, and it includes the following provision: “If, within the time prescribed by rule 8.104 to appeal from the judgment, any party serves and files a valid notice of intention to move—or a valid motion—to vacate the judgment, the time to appeal from the judgment is extended for all parties until the earliest of: [¶] (1) 30 days after the superior court clerk mails, or a party serves, an order denying the motion or a notice of entry of that order; [¶] (2) 90 days after the first notice of

intention to move—or motion—is filed; or [¶] (3) 180 days after entry of judgment.”  
(Cal. Rules of Court, rule 8.108 (c).)<sup>5</sup>

The rule 8.108 (c) extension applies here. Notice of the summary judgment was mailed by the clerk on June 15, 2007, and appellant’s motion to vacate the judgment was served on July 11, 2007 and filed on July 12, 2007. Because the motion to vacate was served and filed within the 60-day period allowed by rule 8.104 to appeal from the summary judgment, the motion was timely and it provided an extension of time to file an appeal from that judgment. However, the time for appealing from the judgment was extended by that motion only to the *earliest* of three dates: (1) 30 days after the superior court clerk mailed, or a party served, a copy of the order denying the motion to vacate or a notice of entry of that order; (2) 90 days after the motion to vacate the judgment was filed; or (3) 180 days after entry of the summary judgment.

Hearing on the motion to vacate the summary judgment was held on October 26, 2007. A proposed “order after hearing” denying the motion to vacate was submitted by the County to the court on November 28, 2007, and the order was signed by the court on December 19, 2007. The record does not indicate when (or if) a copy of the December 19, 2007 order denying the motion (or a notice of entry of that order), was

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<sup>5</sup> Prior to amendment of rule 8.108 effective January 1, 2008, rule 8.108 (c) was designated rule 8.108 (b).

Rule 8.108 states that it “operates only to extend the time to appeal otherwise prescribed in rule 8.104(a); it does not shorten the time to appeal. If the normal time to appeal stated in rule 8.104(a) is longer than the time provided in this rule, the time to appeal stated in rule 8.104(a) governs.” (Cal. Rules of Court, rule 8.108 (a).) That provision is not a factor in this appeal.

mailed by the clerk of the court or served by a party. However, the earliest such mailing or service could have taken place was on the very day the order was signed, December 19, 2007; 30 days thereafter would have been *January 18, 2008*. Regarding the other two time periods set out in rule 8.108 (c), *October 10, 2007*, was the 90th day after appellant's notice of motion to vacate was filed; and *December 12, 2007*, was the 180th day after entry of the summary judgment. The *earliest* of those three dates was October 10, 2007. Under rule 8.108(c), the extension of time to file a notice of appeal from the summary judgment was effective *only* to that earliest date. However, appellant's notice of appeal was not filed until December 21, 2007. Thus, the appeal from the summary judgment was not timely. Rule 8.104 (b) provides that except in circumstances not relevant here, "no court may extend the time to file a notice of appeal. If a notice of appeal is filed late, the reviewing court must dismiss the appeal." Appellant's appeal from the summary judgment must be dismissed as untimely.

In *Socol v. King* (1949) 34 Cal.2d 292, 296, the court addressed the same situation and said: "Since appellants, notwithstanding their pending motion for vacation of the judgment, failed to file notice of appeal from the judgment within th[e] extended time [provided by the rules of appeal], the appeal from the judgment must be dismissed." Nevertheless, the *Socol* court observed that its inability to decide the merits of the appeal taken from the judgment would not leave the appellants in that case "completely remediless." (*Socol v. King, supra*, 34 Cal.2d at p. 296.) Under the Code of Civil Procedure's provisions regarding appealable judgments and orders (formerly section 963, now section 904.1), the order denying the appellants' Code of Civil

Procedure section 663 motion to vacate the judgment was independently appealable. Therefore, said the court, since the appellants did file a timely appeal from that order, the merits of the order could be reviewed by the court “notwithstanding that the same grounds could be urged on an appeal from the judgment.” (*Ibid.*)

We reject appellant’s assertion that the summary judgment is void and is therefore subject to attack on appeal without compliance with the time provisions in the Rules of Court for filing notices of appeal. Appellant cites no authority for the proposition that an *appeal* from a void judgment need not be timely filed. Moreover as discussed below, in deciding appellant’s motion to vacate the bail forfeiture, the court rejected appellant’s contention that the clerk of the court failed to comply with fundamental jurisdictional notice prescriptions in a relevant bail bond statute—section 1305. Therefore, the facts of this case do not require a finding that the judgment is void.

For the foregoing reasons, appellant’s notice of appeal from the summary judgment was not timely and we are without jurisdiction to consider the appeal. It must therefore be dismissed. However, because appellant’s appeal from the order denying its motion to vacate the summary judgment and bail forfeiture was timely filed, we will now consider the merits of that motion.

2. *Denial of Appellant’s Motion to Vacate Was Not an Abuse of Discretion*

a. *Governing Law Regarding Bail Bonds and Their Forfeitures*

In criminal proceedings in California, matters of bail are governed by section 1268 et seq. Section 1305 provides that when bail for forfeited and the dollar

amount of the bail is more than \$400, “the clerk of the court shall, within 30 days of the forfeiture, mail notice of the forfeiture to the surety or the depositor of money posted instead of bail. At the same time, the court shall mail a copy of the forfeiture notice to the bail agent whose name appears on the bond. The clerk shall also execute a certificate of mailing of the forfeiture notice and shall place the certificate in the court’s file. If the notice of forfeiture is required to be mailed pursuant to this section, the 180-day period provided for in this section [for vacating the forfeiture so that entry of a summary judgment on the forfeiture does not occur] shall be extended by a period of five days to allow for the mailing.” (§ 1305, subd. (b).)

Section 1305 further provides that “[i]f the surety is an authorized corporate surety, and if the bond plainly displays the mailing address of the corporate surety and the bail agent, then notice of the forfeiture shall be mailed to the surety at that address and to the bail agent, and mailing alone to the surety or the bail agent shall not constitute compliance with this section. [¶] *The surety or depositor shall be released of all obligations under the bond if any of the following conditions apply:* [¶] (1) The clerk fails to mail the notice of forfeiture in accordance with this section within 30 days after the entry of the forfeiture. [¶] (2) The clerk fails to mail the notice of forfeiture to the surety at the address printed on the bond. [¶] (3) The clerk fails to mail a copy of the notice of forfeiture to the bail agent at the address shown on the bond.” (§ 1305, subd. (b), italics added.)

Section 1306 provides that when the period of time provided for in section 1305 for vacating the forfeiture (180/185 days), has elapsed without the forfeiture having

been vacated, the court shall enter a summary judgment on the forfeiture within 90 days and if such judgment is not entered within the 90-day period, the court's right to enter judgment expires and the bail is exonerated. As noted in footnote 4 *ante*, a right to challenge the entry of bail forfeiture or a summary judgment based on the forfeiture is recognized by section 1308.

Although summary judgment on a bail bond is a consent judgment and ordinarily not appealable, the judgment must be entered according to the terms of the consent phrase stated on the bail bond, and if not entered in compliance with the consent given, the judgment is appealable. (*People v. Wilshire Ins. Co.* (1975) 46 Cal.App.3d 216, 219.) In the instant case, the following consent language appears on the subject bail bond: "If the forfeiture of this bond be ordered by the Court, judgment may be summarily made and entered forthwith against [appellant] for the amount of its undertaking herein, as provided by Sections 1305 and 1306 of the California Penal Code."

Because the law disfavors forfeitures, procedural duties set out in sections 1305 and 1306 are jurisdictional prescriptions and are strictly construed in favor of the surety. (*People v. Wilshire Ins. Co.*, *supra*, 46 Cal.App.3d at pp. 219-220.) Acts taken by a court beyond particular procedures and limitations of those statutes are in excess of the court's jurisdiction and summary judgments resulting there from are void. (*Id.* at pp. 220-221.) The court in *People v. Wilshire Ins. Co.* observed that the failure of the trial court in that case to follow the jurisdictional prescriptions in section 1305 to mail notice of forfeiture to the surety and the bail agent, as required to do so by the consent

terms of the bail bond, resulted in the summary judgment on the bond being void.

(*Id.* at pp. 219-221; accord *County of Los Angeles v. Resolute Ins. Co.* (1972)

22 Cal.App.3d 961, 962-963, failure to mail notice of forfeiture to surety's principal office; *People v. Earhart* (1972) 28 Cal.App.3d 840, 842-844, failure to mail notice of forfeiture to bail agent.)

In *People v. American Contractors Indemnity Co.* (2004) 33 Cal.4th 653, the Supreme Court addressed the difference between void and voidable acts and judgments of a court. When a court has jurisdiction over the parties and the subject matter of a case (that is, has fundamental jurisdiction to hear and determine the case), but acts in a way that is contrary to prescribed procedures and thus exceeds its jurisdiction/authority, its acts or judgment are voidable, not void, and are valid until they are set aside. (*Id.* at pp. 660-661.) However, said the court, there are situations where the prescriptive language of a statute dictates that the court's acts or judgment made contrary to the prescribed procedures are void. Thus, the court observed that section 1305 provides that if the court clerk does not give notice of forfeiture in the manner provided by that section, the surety is "released of all obligations under the bond," and section 1306 provides that if summary judgment is not entered prior to the expiration of the 90-day period provided for in that section, the bail is exonerated. (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at p. 661.) In those situations, summary judgments entered by the court are void, not voidable because fundamental jurisdiction is lost. (*Ibid.*) In contrast said the court, the summary judgment that was entered one day prematurely in the case it was reviewing was

voidable not void, because section 1306 does not provide that bail is exonerated if judgment is entered prior to the day on which it may first be entered. (*People v. American Contractors Indemnity Co.*, *supra*, 33 Cal.4th at pp. 662-663.) The court stated that the premature entry of judgment “did not affect the court’s statutory control and jurisdiction over the bond” (*id.* at p. 662) because a court has jurisdiction over a bail bond until the bond is satisfied, exonerated, or the time for entering summary judgment after forfeiture expires (*id.* at p. 663).

b. *The Issue of Jurisdictional Notice of Forfeiture in This Case*

Appellant asserts the summary judgment entered on the bail bond forfeiture in this case is void for failure of the trial court to comply with section 1305’s jurisdictional notice requirements. This contention is based on appellant’s assertion that bail agent Hutch did not *receive* notice of bail forfeiture and therefore the trial court’s notice of forfeiture efforts could not have complied with section 1305’s jurisdictional prescriptions. Thus, the argument goes, appellant was released of all obligations under its bond, the trial court had no jurisdiction to enter a summary judgment on the bail forfeiture, and the court should have granted appellant’s motion to vacate the forfeiture and the judgment.<sup>6</sup> Whether to grant appellant’s motion to set aside the bail forfeiture

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<sup>6</sup> Citing Code of Civil Procedure section 473, subdivision (b), the County asserts that appellant’s challenge to the validity of the notice of bail forfeiture was not timely made because it was not brought within the six-month time parameter allowed by that subdivision. As noted above, after the clerk sent notice of forfeiture, appellant filed two motions for extensions of the 185-day period for relief from forfeiture. The County states that in those motions, appellant did not assert that the clerk failed to comply with section 1305’s notice of forfeiture requirements, and it was not until the motion to

was a matter for the trial court's discretion and we will not disturb its decision unless the record demonstrates that discretion was abused. (*People v. Legion Ins. Co.* (2002) 102 Cal.App.4th 1192, 1195.)

In support of its motion to vacate, appellant presented the declaration of Hutch's owner, Hutch Harutyunyan. Mr. Harutyunyan stated that since October 1997, his business address (a post office box number) has always been the same, and that address is the one listed for him on the face of the subject bail bond. He stated that since October 1997, he "ha[s] never had any trouble receiving mail from the courts, except on this case," and here, he never received the notice of bail forfeiture for the bail bond in question, although he did receive the subsequently mailed notice of summary judgment and demand for payment that the court mailed to his business address. He stated he picks up the mail from his post office box three times a week, and 99% of the time when there is a letter from the court he opens it at the post office. He stated that at his office he makes phone calls to determine why a criminal defendant has missed a court date, and he notes on the criminal defendant's file the date of bail forfeiture, the date notice of forfeiture was mailed, and "the due date on the 180 days." He stated his clients with forfeitures are marked in red in his computer files and the paper file for that client is not returned to the file cabinet; instead, the file is placed on his desk in the

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vacate the forfeiture and summary judgment that the assertion of improper section 1305 notice was made. However, a challenge based on notice requirements in section 1305 is a challenge to fundamental jurisdiction that can be raised for the first time on appeal. (*County of Madera v. Ranger Ins. Co.* (1991) 230 Cal.App.3d 271, 279, where the court failed to give the surety notice prior to reinstating bail.) The provision in subdivision (d) of section 473 for setting aside void judgments does not include a time limitation.

portion of the file rack for forfeitures where the bond has not been exonerated, and the file remains there until the forfeiture issue is resolved. He stated that although he did not receive a notice of forfeiture for the subject bail bond in the instant case, appellant did receive the notice of forfeiture on May 1, 2006, and he in turn received notice from appellant in June 2006, via appellant's monthly forfeiture report, that the bail bond had been forfeited.

Thus the trial court, in reviewing appellant's motion to set aside the bail forfeiture and judgment, had both (1) a certificate of service from the court clerk stating that a section 1305 notice of bail forfeiture was sent, on the date of the forfeiture, to Hutch and to appellant, at their respective addresses listed on the bail bond, and (2) a declaration from Hutch's owner, saying he never received such notice. Both statements were made under penalty of perjury.

Based on this status of the evidence, appellant asserts the trial court had no jurisdiction to enter a bail forfeiture because the clerk *failed to give notice of the forfeiture to Hutch*. Appellant asserts (1) the County offered no evidence to contradict Harutyunyan's assertion he did not *receive* the notice of forfeiture, (2) the clerk's certificate of service does not establish an irrebuttable presumption of *receipt*, and (3) the Evidence Code section 641 presumption that Harutyunyan *received* the notice was dispelled by his declaration of non-receipt.<sup>7</sup>

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<sup>7</sup> Evidence Code section 641 states: "A letter correctly addressed and properly mailed is presumed to have been received in the ordinary course of mail." The presumption in section 641 is a rebuttable presumption affecting the burden of

We do not agree with appellant’s analysis. The trial court was not required to conclude that lack of receipt of notice equates with lack of service of notice. It was the presumption of *receipt* that was dispelled by Harutyunyan’s declaration (Evid. Code, § 604), not the fact of the service asserted in the clerk’s certificate of service. Thus, the trial court was required to decide whether the clerk of the court mailed the notice of forfeiture to Harutyunyan, and in so deciding, to consider the clerk’s certificate of service and Harutyunyan’s declaration of nonreceipt, together with the other presumption at play—“that official duty has been regularly performed” (Evid. Code, § 664). This is a rebuttable presumption affecting the burden of proof, that is, the burden of persuasion (Evid. Code, § 660), and its effect is to “impose upon the party against whom it operates the burden of proof as to the nonexistence of the presumed fact” (Evid. Code, § 606). The presumption is applicable to the official duties of court clerks. (*American Contractors Indemnity Co. v. County of Orange* (2005) 130 Cal.App.4th 579, 583.) Thus, appellant had the burden of proof on the issue whether the clerk of the court complied with official duty under section 1305 by mailing notice of forfeiture to bail agent Hutch. Harutyunyan’s declaration of nonreceipt is not

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producing evidence. (Evid. Code, § 630.) Under Evidence Code section 604, “[t]he effect of a presumption affecting the burden of producing evidence is to require the trier of fact to assume the existence of the presumed fact unless and until evidence is introduced which would support a finding of its nonexistence, in which case the trier of fact shall determine the existence or nonexistence of the presumed fact from the evidence and without regard to the presumption. Nothing in this section shall be construed to prevent the drawing of any inference that may be appropriate.” Although the presumption disappears when contradictory evidence is introduced, “inferences may nevertheless be drawn from the same circumstances that gave rise to the presumption in the first place.” (*Craig v. Brown & Root, Inc.* (2000) 84 Cal.App.4th 416, 421.)

conclusive evidence on the issue. Moreover, there was an intervening actor—the post office, with its many persons who handle mail sent to Hutch. It was an issue of fact for the trial court to decide and the court decided it against appellant.

Section 1305 “ ‘has two related objects: to employ a *reasonably effective* means of notice, and to create a reasonably reliable record of that notice.’ ” (*People v. Legion Ins. Co.*, *supra*, 102 Cal.App.4th at p. 1196, italics added.) The reasonably effective means of notice of bail forfeiture is mailing the notice of forfeiture to both the surety and its bail agent, at their respective addresses listed on the bail bond, within 30 days of forfeiture; and the reasonably reliable record of that notice is the requirement that the clerk execute a certificate of mailing and place it in the court’s file. Here, there is evidence of both in the record, and there is the fact that appellant does not deny that *it* received actual, timely notice of the forfeiture. We find no abuse of the trial court’s discretion in the order denying appellant’s motion to vacate the bail forfeiture.<sup>8</sup>

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<sup>8</sup> Appellant’s reliance on *Bonzer v. City of Huntington Park* (1993) 20 Cal.App.4th 1474 is misplaced. In *Bonzer*, a city, the city’s chief of police, and its civil service commission, who were named as defendants in a petition for writ of mandate case, did not appear at a hearing on the petition. At the hearing the petition was granted and judgment was entered in favor of the plaintiff. Thereafter, the defendants filed a Code of Civil Procedure section 473 motion to vacate the judgment and recall the writ of mandate. The basis of their motion was that none of the defendants had received actual notice of the hearing at which the writ petition was granted and judgment was entered. To support the motion, defendants presented six declarations regarding this nonreceipt of actual notice. The declarants were the chief of police, his secretary, the city’s clerk, the city’s chief administrative officer and his personnel assistant, and the attorney representing the defendants. The plaintiff’s evidence that notice of the hearing *was received* by the defendants was a declaration made by an employee of the attorney who represented the plaintiff, and that was coupled with plaintiff’s reliance on the above-discussed rebuttable presumption in Evidence Code section 641 that a letter

c. *The “Material Increase of Risk” Issue*

As noted above, when the defendant in this case was arrested he was charged with having violated section 243, subdivision (c) (2), felony battery on a peace officer engaged in the performance of his or her duty, and the subject bail bond was issued by Hutch. Two days later, the criminal complaint against the defendant was filed by the County. The complaint alleges in count one a felony violation of section 69, attempting by means of threats and violence to deter and prevent an executive officer from performing a duty imposed on the officer by law; in count two a felony violation of section 243, subdivision (c) (2), battery on a peace officer engaged in the performance of his or her duty; and in count three a misdemeanor violation of section 243, subdivision (b), battery on a peace officer engaged in the performance of his or her duty. The complaint also alleges a prior conviction, on counts one and two, of violating section 459, residential burglary.

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properly addressed and mailed is presumed to have been received in the ordinary course of mail. The employee’s declaration was made in the proof of service by mail that she signed for service of the notice of hearing on the petition for writ of mandate. In the declaration she stated that under the law firm’s practice for mailing correspondence, the notices to the defendants would be deposited with the United States mail in the ordinary course of business.

The trial court denied the defendants’ section 473 motion and the reviewing court reversed, holding that given the evidence presented by the defendants that they did not receive the notices of hearing, under Evidence Code section 604 the section 641 presumption of receipt ceased to exist, and as a matter of law the trial court’s inference that the notices sent by the plaintiff’s attorney were received by the defendants was inappropriate, and the denial of the section 473 motion was an abuse of discretion.

*Bonzer* is of no help to appellant. It was based on a claim by the defendants in the case that they did not receive notice of a hearing and thus were not able to present a defense to the petition for writ of mandate. Here, appellant *admits it received notice of the bail forfeiture*. Indeed, appellant acted on its receipt of the notice of forfeiture by twice requesting extensions of the 185-day period for vacating the forfeiture.

Appellant contends that with the filing of the complaint, the defendant was exposed to a greater punishment than he faced when he was initially jailed, which in turn increased the risk that the defendant would flee, and therefore the County unilaterally and materially increased the risk that appellant assumed on the bail bond. Appellant asserts that because of this increased risk, it is discharged from its bond obligations.

A bail bond is a contract between the government and the surety. (*People v. Amwest Surety Ins. Co.* (1991) 229 Cal.App.3d 351, 356.) The liability of the surety is limited to the terms of the contract. (*Coast Surety Co. v. Municipal Court* (1934) 136 Cal.App. 186, 188.) In the instant case, the bail bond includes the following “undertaking provision.” “[Appellant] hereby undertakes that the above-named defendant will appear in the above-named court on the date above set forth to answer any charge *in any accusatory pleading based upon the acts supporting the complaint filed against him/her and all duly authorized amendments thereof*, in whatever court it may be prosecuted, and will at all times hold him/herself amenable to the orders and process of the court, and, if convicted, will appear for pronouncement of judgment or grant of probation; or, if he/she fails to perform either of these conditions, that [appellant] will pay to the people of the State of California, the sum of Fifty thousand dollars.” (Italics added.)

Appellant cites to Colorado cases to support its position that the difference between the charge that the defendant in this case was arrested on and the charges that are contained in the later-filed complaint against him constitutes a material increase in

the risk assumed by appellant under its bail bond. However, in describing the facts of the cited cases, appellant only includes the original charges against the defendants and the subsequently added charges against them, and appellant does not set out the *terms* of the respective bail bonds at issue in those cases.

The terms of a bail bond are material facts, and here, appellant does not acknowledge that the bail bond in the instant case uses the term “charge” in two ways. First, that bond states that the defendant in the criminal case was to appear on February 21, 2006 on a felony charge on section 243, subdivision (c)(2). Then, the subsequent “undertaking provision” in the bond, which we have set out above, includes the statement that appellant undertook to ensure that the defendant would appear “to answer any charge in any accusatory pleading [that is] based upon the acts supporting the complaint filed against him.” The appellate record does not show that any complaint had been filed against the defendant when the bail bond issued on January 31, 2006; there was only the arresting officer’s charge of battery on a peace officer in the performance of his or her duty. Therefore, even though the complaint that was eventually filed included more than the one charge on which the defendant was arrested and also included a prior conviction, under the terms of the “undertaking provision,” it cannot be considered to be a unilateral and material *increase* in the risk assumed by appellant. Appellant was free to monitor the case and determine what charges and prior conviction allegations were ultimately made in the original complaint, and free to surrender the defendant pursuant to section 1300 if it believed the bond was inadequate to cover the flight risk presented by the complaint.

Nor do two other cases cited by appellant support its position. In *People v. Surety Ins. Co.* (1983) 139 Cal.App.3d 848, a criminal case was dismissed and the defendant was discharged, but he was immediately rearrested and charged on a new complaint that alleged the same offense. The bail bond was transferred from the old case to the new one, but the clerk failed to give the required section 1303 notice of transfer of bail to the surety that posted bail in the first case. In *People v. Resolute Ins. Co.* (1975) 50 Cal.App.3d 433, a criminal complaint was dismissed after a grand jury indicted the defendant on approximately the same charges plus a conspiracy charge. The defendant's bail was transferred to the indictment but the required section 1303 notice of the transfer was not given to the sureties. In both cases, the reviewing courts held that section 1303 notice is a mandatory protection for a surety that is being subjected to a unilateral amendment of its contract by having its bail transferred from one case to another, and a failure to provide the surety with notice of the transfer, so that it can appraise the new complaint and decide whether to assume the risk in it or surrender the defendant, warrants exoneration of the bail.

That is not what we are dealing with here. There has been only one complaint filed. Moreover, we observe that the "undertaking provision" in the instant bail bond appears designed to deal with situations where new accusatory pleadings are filed after the original complaint. In that respect, it is different from the language for written undertakings set out in section 1278, which states in part that sureties undertake that the criminal defendant "will appear and answer any charge in any accusatory pleading

*based upon the acts supporting the charge above mentioned,”* that is, the charge on which the court ordered the defendant to appear.

Appellant argues that a surety is entitled to stand on its contract, and increasing the risk to a surety is the gravamen of a unilateral change on the part of the government. We have no quarrel with those arguments. They simply do not apply to this case.

The trial court did not err in denying appellant’s motion to vacate the judgment and bail forfeiture.

***DISPOSITION***

The appeal from the summary judgment is dismissed. The order denying appellant’s motion to vacate is affirmed. Costs on appeal to the County.

***NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS***

CROSKEY, J.

WE CONCUR:

KLEIN, P. J.

ALDRICH, J.